

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MARK A. SHLIFKA,

Attorney-Respondent,

No. 6198254.

Commission No. 2023PR00076

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Tammy L. Evans, pursuant to Supreme Court Rule 753(b), complains of Respondent, Mark A. Shlifka, who was licensed to practice law in Illinois on November 10, 1988, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Conflict of Interest and Conduct that is Prejudicial to the Administration of Justice)

1. Between February 13, 2018 and April 24, 2023, Respondent was employed with the Kendall County State's Attorney's Office as the First Assistant State's Attorney.
2. On February 26, 2020, a Kendall County grand jury returned an indictment against Jose M. Aguirre ("Aguirre"), charging him with two felony counts of aggravated battery, alleging that he strangled his girlfriend ("J.N."). The matter was docketed as *The People of the State of Illinois v. Jose Aguirre*, case number 2020CF48. As the victim, J.N. was a necessary witness in case number 2020CF48.
3. Respondent was assigned to case number 2020CF48 and prosecuted the matter on behalf of the Kendall County State's Attorney.

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4. In a separate case, on February 26, 2021, a Kendall County grand jury returned an indictment against J.N., charging her with aggravated driving under the influence, a Class 4 felony, and driving while license revoked, a Class 4 felony. The matter was docketed as *The People of the State of Illinois v. [J.N.]*, case number 2021CF10. A condition of J.N.'s bond was that she could not leave the State of Illinois. Ryan Phelps ("Phelps"), Kendall County Assistant State's Attorney, was the prosecutor assigned to case number 2021CF10. Between February 26, 2021 and April 24, 2023, Respondent was Phelps' supervisor.

5. On March 16, 2022, a bench trial was held in case number 2020CF48. J.N. testified at the bench trial. Judge Robert Pilmer found Aguirre guilty of aggravated domestic battery, a Class 2 felony, and domestic battery, a Class A misdemeanor. Judge Pilmer continued the matter for sentencing to May 13, 2022.

6. On or about March 31, 2022, Respondent began communicating with J.N. via LinkedIn, a business and employment-focused social media platform.

7. On or about April 14, 2022, Respondent began a sexual relationship with J.N.

8. On May 13, 2022, approximately one month after Respondent began engaging in a sexual relationship with J.N., he appeared in court on behalf of the Kendall County State's Attorney for the sentencing hearing in case number 2020CF48. On that date, Judge Pilmer sentenced Aguirre to 70 days of periodic imprisonment, probation for a period of 30 months, and ordered him to pay costs and fines in the amount of \$1,993.

9. On or about December 4, 2022, Respondent purchased a plane ticket for J.N. so that she could accompany him to a legal conference that Respondent was attending in Palm Springs, California. J.N. subsequently flew to Palm Springs and spent the weekend with Respondent.

10. At the time J.N. accompanied Respondent to Palm Springs, a condition of her bond for case number 2021CF10 prohibited her from traveling out of state.

11. At no time did Respondent inform the court or the Kendall County State's Attorney that he caused J.N. to leave the state in violation of the conditions of her bond in case number 2021CF10.

12. The sexual relationship between Respondent and J.N. ended in or around January 2023.

13. On April 6, 2023, J.N. appeared in court for a 402 conference in case number 2021CF10. The court conducted the 402 conference in a conference room outside of the courtroom. J.N., her counsel, and Phelps were present in the conference room for the 402 conference. Respondent was also present in the conference room while the court conducted J.N.'s 402 conference, because a case that he was handling also had a 402 conference scheduled on that date.

14. At no time during J.N.'s 402 conference did Respondent leave the room while the conference was being conducted, or inform Phelps or the court that he had previously been engaged in a sexual relationship with J.N.

15. On April 24, 2023, Respondent resigned from the Kendall County State's Attorney's Office. The court appointed a special prosecutor to handle case number 2021CF10 and case number 2020CF48.

16. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. engaging in a conflict of interest, by conduct including engaging in a sexual relationship with J.N.: 1) while she was the victim witness in case number 2020CF48, which he was personally prosecuting, and 2) while she was a criminal defendant in case number 2021CF10, a felony matter that was being prosecuted by the Kendall County State's

Attorney's Office, and that was assigned to an assistant state's attorney whom Respondent supervised, in violation of Rule 1.7(a)(2) of the Illinois Rules of Professional Conduct (2010), and

- b. engaging in conduct that is prejudicial to the administration of justice, by conduct including, engaging in a sexual relationship with J.N., who was the victim in an aggravated battery case that Respondent was personally prosecuting, and a criminal defendant in case number 2021CF10, a felony matter that was being prosecuted by the Kendall County State's Attorney's Office, and that was assigned to an assistant state's attorney whom Respondent supervised, and purchasing a plane ticket for J.N. so that she could accompany him to Palm Springs for a work conference at a time when a condition of her bond in case number 2021CF10 prohibited her from traveling out of state, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Unauthorized Video Recording)

17. Pursuant to 720 ILCS 5/26-4(a-5), "it is unlawful for any person to knowingly make a video record or transmit live video of another person in that other person's residence without that person's consent."

18. Pursuant to 720 ILCS 5/26-4(a-10), "it is unlawful for any person to knowingly make a video record or transmit live video of another person's intimate parts for the purpose of viewing the body of or the undergarments worn by that other person without that person's consent. For the purposes of this subsection (a-10), "intimate parts" means the fully clothed genitals, pubic area, anus, or if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing."

19. Pursuant to 720 ILCS 5/26-4(e), "video record" means and includes videotape, photograph, film, or other electronic or digital recording of a still or moving visual image.

20. Between April 14, 2022 and December 31, 2022, Respondent used a cellular telephone to record a still photograph of J.N.'s naked body and still photographs of his penis on J.N.'s head, his penis in close proximity to J.N.'s head, and his penis in close proximity to her naked buttocks, all while J.N. was asleep in her bed.

21. At the time Respondent took the still photographs, described in paragraph 20, above, J.N. was asleep and unable to consent to being photographed by him.

22. Respondent committed the criminal act of unauthorized video recording, in violation of 720 ILCS 5/26-4(a-5) and 720 ILCS 5/26-4(a-10), when he took the still photographs, described in paragraph 20, above.

23. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, by committing the criminal offense of unauthorized video recording, described in paragraph 20, above, in violation of 720 ILCS 5/26-4(a-5) and 720 ILCS 5/26-4(a-10), and in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

COUNT III
(*Battery*)

24. Pursuant to 720 ILCS 5/12-3(a), "a person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."

25. Between April 14, 2022 and December 31, 2022, Respondent used a cellular telephone to record a still photograph of his penis on J.N.'s head. At the time Respondent took the still photograph of his penis on J.N.'s head, J.N. was asleep and unable to consent to being photographed by Respondent.

26. When Respondent took the still photograph of his penis on J.N.'s head, he knowingly without legal justification by any means made physical contact of an insulting or provoking nature with J.N., thereby committing battery.

27. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, by committing the criminal offense of battery, in violation of 720 ILCS 5/12-3(a)(2), and in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Lea S. Gutierrez, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Tammy L. Evans
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